

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

IN RE: ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION	Master File No. 2:12-MD-02327 MDL No. 2327
THIS DOCUMENT RELATES TO ALL CASES	JOSEPH R. GOODWIN U.S. DISTRICT JUDGE

DEFENDANTS' MOTION FOR REDUCTION OF DISCOVERY POOL

In response to Plaintiffs' recent request for voluntary dismissals of two of Defendants' Discovery Pool selections, Defendants Ethicon Inc. and Johnson & Johnson ("Defendants") hereby request that the Discovery Pool be reduced from 30 to 26 plaintiffs to mitigate the prejudice caused by these dismissals. Defendants also request that they be permitted to select which two plaintiffs should be dropped from the Discovery Pool.

BACKGROUND

The Court previously ordered that each side select 15 plaintiffs, for a total of 30, to constitute the Discovery Pool. Both sides submitted their selections on March 22, 2013. Defendants' selections included Plaintiff Mary Ann Brooks (Case No. 2:12-cv-02330) and Plaintiff Vickie Benedict (Case No. 2:12-cv-04944). Plaintiff and Defendant Fact Sheets were due to be exchanged April 8.

Plaintiff Mary Ann Brooks

On April 8, Defendants provided a Defendant Fact Sheet for Ms. Brooks, but no Plaintiff Fact Sheet was received from Ms. Brooks. Two days after the Plaintiff Fact Sheet was due, Ms. Brooks's attorney advised the Defendants that Ms. Brooks might wish to dismiss her claims. Defendants responded that any dismissal should be "with prejudice." On April 26, 2013, Plaintiff Mary Ann Brooks filed a motion to dismiss her claim without prejudice under Federal Rule of Civil Procedure 41(a)(2). (Doc. #14, #15, Case No. 2:12-cv-02330 (Apr. 26, 2013)). Defendants have opposed a dismissal without prejudice in a separate response to Plaintiff's motion.

Plaintiff Vickie Benedict

Plaintiff Vickie Benedict, another defense discovery selection, advised on April 24, 2013, that she too would be voluntarily dismissing her case. She filed her Stipulation of Dismissal with Prejudice on May 1, 2013. (Doc. #20, Case No. 2:12-cv-04944 (May 1, 2013). Though Ms. Benedict has stipulated to dismissal with prejudice, the dismissal does not cure the prejudice to defendants in having another of their discovery selections pulled from the group of 30 cases.

ARGUMENT

Even if both Plaintiffs are dismissed with prejudice, unfair prejudice to Defendants remains. With these dismissals, Defendants are deprived their right to select bellwether candidates on equal footing as Plaintiffs, and Defendants' choices now comprise a lesser proportion of the total Discovery Pool.

In order to remedy the obvious prejudice to Defendants by Plaintiffs effectively striking two of the defense Discovery Pool selections, Defendants request that the bellwether selection pool be reduced to 26 plaintiffs so that the pool will be comprised of 13 Plaintiffs' picks and 13

Defendants' picks. Defendants request that the Court permit Defendants to select the two plaintiffs to strike from the Discovery Pool selections.

In the alternative, Defendants request the opportunity to designate replacement selections, and that the Court extend all applicable deadlines to allow the same time for discovery of these replacement selections as afforded for other Discovery Pool selections.

CONCLUSION

For the foregoing reasons and in the interest of justice, Defendants respectfully request that the Court order the Discovery Pool be reduced from 30 to 26 plaintiffs, permitting Defendants to select which two additional plaintiffs to strike. In the alternative only, Defendants request that the Court extend all applicable deadlines to allow equal time for discovery of substitute defense selections to replace Ms. Brooks and Ms. Benedict.

Dated: May 2, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to CM/ECF participants registered to receive service in this MDL.

Christy D. Jones
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